

If tangible personal property is transferred incident to sales of service, this will result in either Service Occupation tax liability or Use Tax liability for the serviceman depending upon his activities. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

November 3, 2004

Dear Xxxxx:

This letter is in response to your letter dated November 28, 2003, in which you request information. We apologize for the delay in getting a response to you. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are in the process of updating our taxability guidelines as they relate to the commercial printing industry. We are in need of your assistance to address the taxability of the following situations.

**Situation 1:**

Printer A has a production facility in your state. Customer X contacts Printer A and orders 5,000 copies of a book. The books are not for resale and Customer X is not an exempt entity. Customer X instructs Printer A to produce and ship 2,000 copies of the book to a location in STATE. Customer X instructs Printer A to store the remaining 3,000 books in your state for later delivery instructions. Printer A invoices Customer X for all 5,000 books, plus shipping related to the 2,000 books shipped to STATE. Over time (could be months) Customer X contacts Printer A and provides mailing label instructions for books to be shipped throughout the United States. Printer A invoices Customer X a service fee for gathering the books (sometimes a single book per package, sometimes several books per package, sometimes Customer X requests that the books be placed in an orderly fashion in a kit (special carton).), plus shipping charges.

**Questions:**

- 1) Are the 3,000 **stored** books taxable in your state at the time of sale, even though they may ultimately be shipped to another state for use? Do you have a temporary storage exemption? If yes, does this fact pattern provide for applicability of a temporary storage exemption?
- 2) If the books are subject to tax in your state upon storage – what tax rate (state & local) is applicable on the 3,000 stored books when they originally go into storage?
- 3) Is the service fee and shipping charge associated with the subsequent assembly/packaging of the stored 3,000 books subject to sales tax in your state?
- 4) Must sales tax be charged on the shipping boxes and/or kit (cartons) associated with shipment of the 3,000 stored books? Must these charges be separately stated on the invoice from the shipping charge or are the shipping and kit containers considered incidental to the sale?
- 5) If Printer A charges Customer X a monthly storage fee – is this fee subject to sales tax?
- 6) If this same fact pattern occurs with a production facility in another state and that state imposes a sales tax on the stored books, is additional sales tax due to your state when the stored books are shipped to your state, if your state and local sales tax rate is higher than that which was paid on the stored books to the storage state?

### **Situation 2:**

Printer A produces promotional catalogs for Customer Y. Customer Y directs Printer A to mail (via the US Postal Service) the catalogs to companies (Customer Y target customers) throughout the United States.

### **Questions:**

- 1) If Printer A is located in your state, are the shipment of catalogs into your state subject to sales tax? Is there an exclusion from sales tax on the basis that the catalogs were shipped using the U.S. Postal Service?
- 2) If Printer A is not located in your state, however, is registered in your state due to solicitation activities, are the shipments of catalogs into your state subject to sales tax? Is there an exclusion from sales tax on the basis that the catalogs were shipped using the U.S. Postal Service?

### **Situation 3:**

Printer A sells to a variety of organizations and industries, many which claim exempt status on their orders.

### **Questions:**

- 1) Does your state exempt sales to educational customers (i.e. private and government schools and colleges)?
- 2) If a customer is claiming a resale exemption, do you accept the Multi-State Tax Commissions exemption certificate? If no, what is your required exemption document?
- 3) If a customer is located in STATE and not registered in any other states (i.e. do not have nexus) and directs Printer A to drop ship books to various states in which Printer A is registered for sales tax, will your state accept a resale tax exemption certificate with the customer's STATE tax identification number?
- 4) How often must Printer A update exemption documentation from customers located in your state?
- 5) If Printer A fails to obtain an exemption documentation at the time of sale, how long do they have to contact the customer and obtain the exemption document?

We appreciate your assistance with this inquiry. Please contact me with any additional questions regarding the fact patterns above. Please forward your response to my attention at your earliest convenience.

## **DEPARTMENT'S RESPONSE:**

### **Issue 1:**

Generally, sellers of books, sheet music and musical recordings, including phonograph records, incur Retailers' Occupation Tax liability when they sell any of these items to purchasers for use or consumption and not for resale. See 86 Ill. Adm. Code 130.2105(a)(1).

If your company is contracting to print custom printed materials, a special order printing situation exists. Under Illinois tax law, the transfer of special order printing materials is a service transaction that may result in either Service Occupation Tax or Use Tax liability for the special order printer. For your general information see 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax. A serviceman's liability may be calculated in one of four ways: 1. separately stated selling price of tangible personal property transferred incident to service; 2. 50% of the serviceman's entire bill; 3. Service Occupation Tax on the serviceman's cost price if he is a registered de minimis serviceman; or, 4. Use Tax on the serviceman's cost price if he is a de minimis serviceman not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

In regards to the first three methods, service customers incur a corresponding Service Use tax liability, which is required to be collected by the serviceman. In the fourth method listed above, the serviceman incurs a Use Tax liability, and his service customer incurs no liability. For this reason, this type of serviceman has no legal authority to collect a "tax" from his service customer.

Printers may claim the interstate commerce exemption for materials shipped outside the State of Illinois, so long as the material is not to be returned to the State of Illinois. Under the interstate commerce exemption, retailers and servicemen do not incur Retailers' Occupation Tax or Service Occupation Tax liability on property that they resell as an incident to a sale of service under an agreement by which they are obligated to make physical delivery of the goods from a point in Illinois

to a point outside Illinois, not to be returned to a point within Illinois, provided that such delivery is actually made. See 86 Ill. Adm. Code 130.605 and 140.501.

In computing Retailers' Occupation Tax liability, no deductions shall be made by a taxpayer from gross receipts or selling prices on account of the cost of property sold, the cost of materials used, labor or service costs, idle time charges, incoming freight or transportation costs, overhead costs, processing charges, clerk hire or salesmen's commissions, interest paid by the seller, or any other expenses whatsoever. Costs of doing business are an element of the retailer's gross receipts subject to tax, even if separately stated on the bill to the customer. See 86 Ill. Adm. Code 130.410. Handling charges, such as the "service fee," represent a retailer's cost of doing business, and are not deductible from the gross charges subject to tax. Shipping charges, in general, are not taxable if it can be shown that they are separately agreed to and are actually reflective of the costs of shipping. See 86 Ill. Adm. Code 130.415. Charges exceeding actual shipping costs are subject to tax.

For general information concerning the sale of containers and other packing materials, see 86 Ill. Adm. Code 130.2070. Monthly storage fees charged by printers to customers would not be subject to sales tax liability unless tangible personal property were transferred incident to the service provided.

We are without sufficient information to respond to your question regarding taxes paid in another state for books shipped into Illinois. Typically, if the purchase were a retail sale then Use Tax liability would be incurred by the recipient and credit would be allowed for taxes properly due and paid in another state.

### **Issue 2:**

Service Occupation Tax or Use Tax liability would generally be incurred on catalogs delivered from Illinois printers to Illinois customers. When the printer produces and sells custom printed promotional catalogs for its customer, it appears to be engaged in special order printing. Under Illinois tax law; the transfer of special order printing materials is a service transaction that may result in either Service Occupation Tax or Use Tax liability for the special order printer. For your general information see 86 Ill. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax as described above in Issue 1.

For situations described in your second scenario to issue 2, please see the Department's sales tax letter rulings on this issue, such as ST-01-0166-GIL. These letter rulings may be found among the Department's Sales Tax "Sunshine Letter" rulings listed on the Department's internet website under the heading of Legal Research.

### **Issue 3:**

Illinois Retailers Occupation Tax and Service Occupation Tax are imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes that organization as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of its organizational purposes. If an organization does not have an E-number, then its purchases are subject to tax. Please be aware that only sales to organizations holding the E-number are exempt, not sales to individual members of the organization.

If an organization submits a valid Department of Revenue issued E-number or a properly completed certificate of resale, you do not have to collect sales tax. If the documentation is not submitted, you should collect and remit tax. Unless an exemption is documented, the sale and delivery of tangible personal property to an Illinois customer creates a legal presumption that the sale is for use in Illinois and subject to tax. See 35 ILCS 105/4.

As stated on the Uniform Sales and Use Tax Certificate-Multijurisdiction form issued by the Multi-State Tax Commission, Illinois has indicated that the Multi-State Tax Commission's exemption certificate will be accepted subject to the requirements set out in 86 Ill. Adm. Code 130.1405.

For documentation required in drop shipment situations, please see 86 Ill. Adm. Code 130.225. Certificates of Registration issued under the Retailers' Occupation Tax Act to taxpayers who file monthly returns under that Act are valid for a period of 5 years.

Books, records and other papers reflecting gross receipts received during any period with respect to which the Department is authorized to issue Notices of Tax Liability as provided in Sections 4 and 5 of the Act shall be preserved until the expiration of such period unless the Department, in writing, shall authorize their destruction or disposal prior to such expiration. Please see Sections 4 and 5 of the Act for considerations in determining the period for which the Department is authorized to issue a Notice of Tax Liability. See 35 ILCS 120/4 and 120/5.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

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Associate Counsel

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